

**Letter of Findings: 02-20150662P
Corporate Income Tax
For the Year 2011**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document to the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Indiana Corporation demonstrated that negligence penalty should be abated.

ISSUE

I. Corporate Income Tax - Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; IC § 6-8.1-5-1; IC § 6-8.1-8-1.5; Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer argues that it should not be subject to penalty on its amended 2011 corporate income tax return as the return was amended due to an Indiana Department of Revenue audit.

STATEMENT OF FACTS

Taxpayer, a multi-state company, is doing business in Indiana. In 2012, the Indiana Department of Revenue ("Department") audited and assessed Taxpayer additional corporate income tax for tax years 2007 through 2010. Taxpayer protested and the Department issued a final determination which concluded Taxpayer's protest on that audit in March 2014. Subsequently, in December 2014, Taxpayer amended its 2011 post-audit corporate income tax return pursuant to the Department's March 2014 final determination - which addressed the immediately preceding years - and paid additional income tax for 2011.

The Department applied the payment of additional income tax to penalty first, then interest and finally to base tax. Because penalty, interest and base tax exceeded Taxpayer's payment, the Department issued a Proposed Assessment assessing additional tax and interest for 2011. A Demand Notice followed for the same. Taxpayer filed a protest requesting abatement of penalty, but the protest was filed untimely. As such, Taxpayer filed a Refund Claim requesting an abatement of penalty. The Department responded with a letter explaining that the penalty would not be abated. An administrative hearing was held. This Letter of Findings results. Additional facts will be provided as necessary.

I. Corporate Income Tax - Negligence Penalty.

DISCUSSION

Taxpayer argues that it should not be subject to penalty in relation to its amended 2011 corporate income tax return.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the tax is valid, and each taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480, 486 n.9

(Ind. Tax Ct. 2012). In reviewing a taxpayer's argument, the Indiana Supreme Court has held, that when it examines a statute that an agency is "charged with enforcing . . . we defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party." *Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Under IC § 6-8.1-10-2.1:

(a) If a person:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department;

the person is subject to a penalty.

(b) Except as provided in subsection (g), the penalty described in subsection (a) is ten percent (10 [percent]) of:

- (1) the full amount of the tax due if the person failed to file the return;
- (2) the amount of the tax not paid, if the person filed the return but failed to pay the full amount of the tax shown on the return;
- (3) the amount of the tax held in trust that is not timely remitted;
- (4) the amount of deficiency as finally determined by the department; or
- (5) the amount of tax due if a person failed to make payment by electronic funds transfer, overnight courier, or personal delivery by the due date.

IC § 6-8.1-10-2.1(d) further provides:

If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

In the event of a partial payment of tax liability by a taxpayer:

The department shall apply the partial payment in the following order:

- (1) To any penalty owed by the taxpayer.
- (2) To any interest owed by the taxpayer.
- (3) To the tax liability of the taxpayer.

IC § 6-8.1-8-1.5.

The Department audited and assessed Taxpayer additional corporate income tax for tax years 2007 through 2010. Taxpayer amended its 2011 return to remain compliant with the result of the audit. A ten percent penalty plus interest was automatically levied on the additional tax calculated. When Taxpayer paid the additional tax per the amended return, it was applied to penalty and interest first, resulting in a Proposed Assessment of the remaining additional tax and interest for 2011. Taxpayer acted reasonably and prudently when it voluntarily filed its amended 2011 corporate income tax return based on the audit's findings for the immediately preceding years, thus, the Department agrees to waive this penalty.

FINDING

Taxpayer's protest is sustained.

Posted: 05/25/2016 by Legislative Services Agency

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